Sahpura Gram Sewa Sahkari Samiti Ltd. & Anr. vs. M/S.Madan Lal Kanak Mal & Anr.

SB Civil 1st Appeal No.31/1983

Date of Order: 08th January, 2007

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.P.S.Chundawat for the appellant/s
Mr.Mohd.Aslam for Mr.Manish Shishodia for the respondent/s.

Heard learned counsel for the parties.

This appeal is filed against a decree of the Court of District Judge, Bhilwara, against the appellants, including proforma respondent Mahadev, who was defendant No.3 in the suit. Mr. Mahadev was Manager with the appellant and in the capacity of Manager he purchased clothes at different times from the plaintiff's shop and decretal amount is for that amount which remained due after non payment of the money for the clothes taken by proforma respondent Mahadev from the plaintiff firm.

The appellant and Mahadev have produced no witnesses. The case of the plaintiff rested on the testimony of his witnesses. There was no rebuttal. The plaintiff in his statement has averred that

defendant No.3, proforma respondent Mahadev , has taken clothes from its firm for the use of the Cooperative Society in question. There is no rebuttal of this evidence and thus Issue No.1 was decided against the appellant. In absence of any evidence in rebuttal the averments made by the plaintiff have been believed by the trial court. The learned counsel for the appellant tried to rely on a bye-law of the society which recites as under:-

"ऋण की सीमा

18- समिति का कारोबार चलाने के लिये प्रबन्ध कमेटी उस सीमा तक ऋण ले सकेगी जो वार्षिक आम सभा में निश्चित की गई हो और रजिस्ट्रार द्वारा निर्धारित ऋण सीमा के नियमों के अनुसार हो।"

The bye-law which has been quoted herein above says that the Cooperative Society may borrow loan. This only relates to cash borrowing. It does not relate to taking clothes on credit. That being the position, the bye law cannot be pressed in to service. There is no evidence of the appellant to the contrary as the trial court has accepted the evidence of the plaintiff in support of its claim. It is also important that Mahadev who was the Manager of the appellant was the agent of the appellant. An act of the agent binds the principal. There is nothing on record to show that the agent was not authorised to do what he has done. Thus, no illegality has been seen. Therefore, Issue No. 1 was rightly decided. That being the position, the

judgment in appeal is not liable to be disturbed. No force. The appeal is dismissed.

(BHAGWATI PRASAD), J.

L.George